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July 13, 2006

Comments on the Notice of Intent to  
Prepare an EIS for Proposed Cape Wind Project  
Minerals Management Service  
381 Elden Street, Mail Stop 4042  
Herndon, VA 20164

To Whom It May Concern:

On behalf of the Association to Preserve Cape Cod, Inc. (APCC), a 5,500 member non-profit environmental advocacy and stewardship organization whose mission is to protect the natural resources of Cape Cod, I am pleased to submit the following comments on the Notice of Intent to Prepare an EIS for the Proposed Cape Wind Project.

### Background

This letter builds on an earlier comment letter submitted to the Minerals Management Service on February 27, 2006 in response to MMS's Advance Notice of Proposed Rulemaking regarding alternate energy development on the U.S. Outer Continental Shelf (OCS). In that letter APCC underscored the need for increased use of renewable energy to reduce the nation's dependence on fossil fuels, and stressed that a comprehensive policy for the development of renewable energy be created to guide and regulate access to U.S. coastal waters. APCC emphasized that such a policy must be developed in coordination with coastal states and include opportunity for public review and input. APCC called for the establishment of pre-designated zones on the OCS and enumerated several broad criteria to determine suitability of sites. APCC also stated that approval of any proposal should come only after a thorough environmental review and itemized the issues that would require exploration (Attachment 1).

### Integration of Planning for Alternate Energy Development with an Assessment of Energy Needs

In this letter, APCC reaffirms its insistence on the need for a comprehensive policy and urges that priority be given to addressing this need. Now, APCC calls on the federal and state governments to integrate planning for alternate energy development on the OCS and coastal waters with an assessment of the need for new energy sources in different regions.

The strong demand for new energy sources, coupled with advances in technology for offshore energy development has resulted in a hodgepodge of proposals in both state and federal waters off of Cape Cod and elsewhere along the eastern coast, which at present are being reviewed by different agencies, on a case by case basis, with no coordination on need or siting. Cape Wind proposes 130 turbines in Nantucket Sound. The Massachusetts

Tidal Energy Company proposes one or more clusters of “tidal in stream energy conversion devices” in Vineyard Sound, and Patriot Renewables proposes three clusters of wind farms in Buzzards Bay. The Minerals Management Service is the lead agency for the first proposal; the Massachusetts Environmental Policy Act will regulate the second and the Federal Energy Regulatory Commission will evaluate the third for a preliminary permit. These three proposals are in very close proximity to each other (Attachment 2).

While these proposed renewable projects are undergoing review, to our south and to our north are proposals for offshore liquefied natural gas terminals. Clearly, the proliferation of proposals calls out for the swift development and implementation of a comprehensive process that integrates energy needs assessment with siting policies and regulation of these proposed projects.

#### Identify Regional Planning Areas

Because of the extreme development pressure on waters in this part of the nation, APCC strongly recommends that the MMS work with the Atlantic coastal states to partition the ocean into logical regional planning areas.

#### Alternatives Analysis

In the MMS’s Notice of Intent for the Cape Wind proposal, the MMS states it will include areas south of Tuckernut Island, Nantucket Shoals, Monomoy Shoals and a deepwater alternative east of Nauset Beach as potential alternative sites. APCC wants to know what screening criteria the MMS used to identify these sites. In particular, APCC is interested to know how the MMS decided the range of “commercial scale” projects it would consider.

APCC criticized the decision of the U.S. Army Corps of Engineers (USACE) in its Draft Environmental Impact Statement to define the range of size for commercial scale energy projects as between 200–1500 MW. Such a range should not apply to wind power projects whose output varies greatly in response to wind speed, and which must cover vast amounts of land or sea. APCC pointed out that Cape Wind’s projected average output would be less than 200 MW (170 MW), below the USACE’s lower limit to be included as “commercial scale.” Yet, even at that reduced size, Nantucket Sound was identified as the only area large enough (and with fewer other constraints) to accommodate such an installation. APCC wonders where the USACE thought a wind farm installation yielding 1500 MW could be sited.

APCC believes the MMS should expand the range of alternatives to be considered in the Cape Wind EIS to include more potential locations, multiple sites for a single project as well as changes in size and array patterns. APCC believes there is merit in exploring the use of multiple sites and points out that the Patriot Renewables’ proposal is for one project of about 90 turbines to be placed in 3 locations of 30 turbines each in the Buzzards Bay area.

From the vantage point of the applicant, Horseshoe Shoals in Nantucket Sound presumably offers the greatest return on investment; however, the location, scale, spacing and placement of turbines in the Cape Wind proposal may not be the most advantageous to the public interest—a public interest that could include the certainty that any installation as large as the

proposal sited for Nantucket Sound will lead to years of lawsuits with the result than no alternative energy facility is constructed at all—an outcome that may not be in the public interest!

Size of the Proposed Project and Phasing of the Project

The lack of experience in regulating offshore wind farms in the U.S., the absence of areas identified and zoned for renewable energy development, combined with the plethora of projects now proposed (and the potential for even more proposals) in our waters make obvious the necessity of proceeding in a careful manner. In addition to advocating that the MMS coordinate its review with those of other proposals in the area, APCC strongly urges the MMS to consider reducing the size of the proposed Cape Wind development and thereby increasing the number of alternative sites where a facility could be located, to consider multiple sites with fewer turbines, and to analyze the spacing and design of the turbine field.

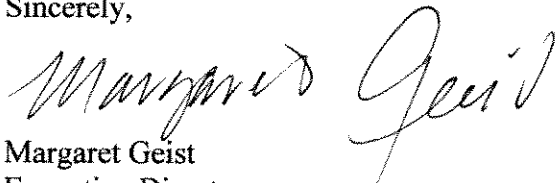
For all of the reasons enumerated above, APCC also strongly recommends that the installation of any project occur in phases, such as occurs in Europe.

Environmental Impacts

APCC has commented extensively in the past on the need for comprehensive studies of impacts to living resources. APCC supports the Massachusetts Audubon Society's insistence on the completion of studies on long-tailed ducks, roseate terns, piping plovers, and migrating songbirds to ensure that there is no significant threat to bird life.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, reading "Margaret Geist".

Margaret Geist  
Executive Director



February 27, 2006

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Department of the Interior  
Minerals Management Service  
Attention: Rules Processing Team (RPT)  
381 Elden Street, MS-4024  
Herndon, VA 20170-4817

Alternate Energy-Related Uses on the Outer Continental Shelf-1010-AD30

To Whom It May Concern:

EXECUTIVE DIRECTOR  
Margaret A. Geist

The Association to Preserve Cape Cod submits the following comments on the Minerals Management Service's Advance Notice of Proposed Rulemaking (ANPR) regarding alternate energy development on the U.S. Outer Continental Shelf (OCS).

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The Association to Preserve Cape Cod (APCC) is a 501(c)3 environmental organization dedicated to protection of the natural resources and quality of life on the Cape Cod peninsula in Massachusetts. Founded in 1968, APCC is the region's leading environmental advocacy organization, and represents the interests of its more than 5,700 members.

As an organization that strives to protect Cape Cod's land-based habitats as well as its coastal and freshwater resources, APCC recognizes that fossil fuel combustion is causing severe damage to human health and the health of our environment. APCC holds that development of clean, renewable energy must be a national priority. The U.S. must develop an energy policy that provides opportunities for the production of renewable energy from appropriate offshore locations. Creation and implementation of a thoughtful, comprehensive program for the siting, permitting and operation of renewable energy facilities will be a significant step toward reducing this country's over-dependence on fossil fuels.

APCC is therefore gratified that the Minerals Management Service (MMS) is developing a regulatory program specifically for the production of alternate energy on the OCS. APCC appreciates the invitation from the MMS and the Department of the Interior for public comment as part of its development of the OCS regulatory program.

Energy Policy Act of 2005

The Energy Policy Act of 2005 authorizes the Department of the Interior to grant leases, easements or rights-of-way on the OCS for the development and support of alternate energy-related uses, to be administered by the

#### Determining Alternate Energy Use Zones

Designated alternate energy use zones would consist of areas where conditions are best suited for alternate energy production, and where there are no overriding environmental, safety or incompatible use concerns.

Zones designated as being inappropriate for alternate energy production should include areas that are of an environmentally sensitive nature or possess significant environmental or natural resource value. For example, areas within the migratory routes, breeding grounds or primary feeding grounds of birds and marine mammals, known fish spawning grounds, and fragile ecosystems such as coral reefs should be designated as inappropriate zones for alternate energy production. Non-environmental factors should also be considered when designating areas as inappropriate for alternate energy production. Areas in the direct path of shipping lanes, areas that support existing uses where safety is an issue, or where other existing uses are incompatible with alternate energy production should also be designated as inappropriate zones.

Designation of appropriate/inappropriate use zones should be determined through environmental and other studies conducted on behalf of MMS, with consultation from state governments and the scientific community, and with opportunity for public comment. Applicable federal agencies should also be consulted. For instance, the National Oceanographic and Atmospheric Administration's National Marine Fisheries Service is uniquely qualified to supply data on fish and marine mammals, as is the U.S. Fish and Wildlife Service for data on birds. The U.S. Coast Guard, the Department of Transportation Maritime Administration and the Federal Aviation Administration are other agencies that should be consulted in the designation of alternate energy production zones on the OCS.

MMS should also take into consideration any pre-existing uses when determining appropriate zones for alternate energy production, particularly if the existing use is a public use or has a public benefit, and if it is consistent with an MMS assessment of appropriate uses for the OCS. Whenever possible, dual uses should be allowed to exist concurrently when they are compatible or at least not in conflict, and if the area can support multiple uses.

Once identified and designated, the zones that are appropriate for alternate energy use should be incorporated into the OCS digital mapping initiative that is outlined in the Energy Policy Act of 2005. The digital mapping initiative is intended to indicate the locations of federally-permitted activities, obstructions to navigation, submerged cultural resources, undersea cables, offshore aquaculture projects and any area designated for the purpose of safety, national security, environmental protection, or conservation and management of living marine resources.

Ensuring protection of the environment when permitting and developing alternate energy uses on the OCS must be a paramount objective of MMS. According to the ANPR, MMS intends to develop an environmental management system that addresses all phases of access, planning, development, on-going operations and removal of facilities at the end of a project's life. The project should be subject to the regulatory authority of MMS and adhere to all federal environmental laws and regulations through all phases of the project's life.

MMS review and regulatory oversight of proposed projects should require a detailed assessment of potential environmental impacts, establish environmental monitoring programs for the project, require appropriate mitigation to offset environmental impacts, and provide necessary enforcement to ensure environmental protection standards are met and maintained.

#### Regulatory Review and Permitting Proposed Projects

Before permission to develop a specific project is given by MMS, comprehensive study and review by MMS of the proposed project must be required. The procedures for consulting and coordinating with federal agencies, states and other interested and affected parties during the regulatory review process for proposed projects should be codified in MMS's regulations in as much detail as practicable. APCC strongly believes the project review process must also be one that guarantees and encourages public scrutiny and input.

The policy for consulting with interested parties regarding proposed projects should be guided by the need to compile all necessary data, rather than adhering to a timetable. It is vital that ample time be allowed for the completion of environmental studies so that project impacts can be accurately assessed. Some studies, such as analyzing potential impacts to avian species from certain kinds of renewable energy facilities, may require several years to complete.

#### Environmental Review of Proposed Projects

Proposed projects falling under MMS jurisdiction should undergo a rigorous and comprehensive review to study environmental impacts caused by the project. Before a proposed project is permitted, an environmental study of the project should consider all project phases, including research, development, ongoing operation, maintenance, decommissioning and removal.

Approval of a project—and for approval of any level of access to the OCS—must be based on compliance with pre-established environmental protection standards.

#### Measuring Environmental Impacts

As a first step, MMS should model its environmental review standards on those adopted by European countries that have an established history of reviewing and siting offshore alternate energy projects. MMS standards for assessing environmental impacts should

in an environmental study of a proposed project are objective, the study should be conducted by an independent third party selected by MMS. The project applicant should be responsible for reimbursing MMS for the costs of conducting the study.

#### Measuring Environmental Benefits of Alternate Energy Projects

The environmental study for a proposed alternate energy project should analyze how the project will benefit the environment. This should be supplied through information that demonstrates what percentage of the total amount of carbon dioxide and other harmful pollutants produced by conventional power plants in the region will be offset by the clean energy produced by the project.

In implementing a program for measuring environmental benefits vs. detriments, MMS should consider ecological risk assessment techniques using guidelines developed by the U.S. Environmental Protection Agency. An ecological risk assessment brings together the wide range of issues associated with a complicated project proposal. It provides a comprehensive and integrated process to rank the risks and benefits, and then places them into a framework to aid the decision-making process.

#### Other Criteria for Project Approval

In addition, even though a project is proposed for a site located in a zone designated for alternate energy use, MMS should still confirm that the specific characteristics of the project in question do not pose potential hazards to shipping, commercial fishing, recreational boating or aviation.

The applicant should also demonstrate that a project, occurring on public lands and utilizing public resources, will provide a public benefit. Initial access rights should be revoked if a proposed project is ultimately denied by MMS.

With regard to development approval of large projects, MMS should reserve the right to require that the development occur in phases.

#### Engineering Considerations and Safety Issues in Regulatory Review

When reviewing alternate energy project proposals, MMS should require engineering studies to show that the project can operate without safety concerns for humans or the environment, and that it will be able to withstand waves, wind and other adverse conditions that may occur on the OCS.

Once site access and a project have been approved, the permit should be subject to periodic review and renewal. A permit for access to develop a project on the OCS should be subject to suspension or cancellation if the project violates the conditions of the permit. The permit should also contain provisions for dismantling the project once it has reached the end of its life.

#### Payments and Revenues for Utilization of the OCS

APCC has long maintained that private developers using a public resource such as the OCS for financial gain must pay a fair amount for access to those public lands. MMS has been given the responsibility to ensure that the U.S. receives fair compensation for permitting alternate energy projects to be developed on the OCS, based on royalties, fees, rentals, bonuses or other forms of payment. A simple method for receiving compensation may be achieved by requiring a rental fee for access to a site on the OCS, and then payment from the project developer based on a percentage of the revenues generated by the project once it is developed and operational.

The Energy Policy Act of 2005 further stipulates that states will receive 27% of the revenues collected from projects located within three nautical miles of state submerged lands. A formula is to be established for payment to states that have a coastline within 15 nautical miles of the geographic center of a project, with the percentage of the payment based on the proximity of the project to the coastline. APCC understands this provision to mean that states are still able to require additional revenue from projects that physically overlap state and federal waters.

#### Profit Disclosure in Project Review Process

The cost to develop the proposed project, as well as the estimated profits the project will yield during its operational life, should be disclosed by the applicant as part of the review process. This information will help MMS determine a reasonable fee structure for access to the OCS. Such financial information provided during the review process can also help MMS and the general public to evaluate the project's anticipated rate of return, compared to the rate of return for a scaled-back project, if a project's proposed size is at issue.

#### Economic/Market Driven Project Benefits vs. Societal Benefits

The creation of alternate energy facilities on appropriate OCS lands will likely generate employment opportunities and other economic benefits for the regions in which they are located. And, some societal benefits also have economic benefits. For instance, a reduction in human health problems linked to air pollution helps lower healthcare costs; the agricultural industry benefits from actions that slow or reverse global warming; and reduction in coastal erosion associated with sea level rise reduces property damage and insurance costs. But there are public benefits to society other than those that are purely market driven. Increased reliance on clean renewable energy also enables the U.S. to shoulder its global responsibility as the largest energy consumer. Moving to renewable energy is a great leap forward for the United States, and not only benefits our nation, but also benefits the greater global community.

#### Conclusion

The development of a regulatory policy for granting leases, easements and rights-of-way on the OCS for the purpose of alternate energy production is an important step in establishing a renewable energy program for the U.S. To establish a successful OCS



